UNITED STATES OF AMERICA BEFORE
THE NATIONAL LABOR RELATIONS BOARD

In the matter of United Government Security Officers of America International and its Local 129, Respondents, and Joseph Anthony Farrell, an individual, Charging Party, and David Wehrer, an Individual, Charging Party.	Case No. 04-CB-192246 04-CB-208578 04-CB-207347

POST-HEARING BRIEF ON BEHALF OF THE UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA AND ITS LOCAL 129

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I. INTRODUCTION

United Government Security Officers of America International Union ("International"), United Government Security Officers of America, Local 129 ("Local") (collectively, "Respondents") and Akal Security, Inc. ("Akal") were parties to an October 1, 2015 to September 30, 2018 collective bargaining agreement (Joint Exhibit 1) covering a bargaining unit of court security officers ("CSOs") and lead court security officers ("LCSOs") providing security services to the federal courts in Scranton, Pennsylvania. On or about December 1, 2017, Paragon Systems ("Paragon") replaced Akal as the employer of employees within the Local 129 bargaining unit. (Parties' Stipulations, at ¶ 2).

The General Counsel has alleged that (1) the International and Local conducted a vote among unit members regarding the reinstatement of Farrell's seniority upon his return from a medical leave of absence because of Farrell's internal union activities and because of his disputes with officials of the Respondents and (2) have since about November 3, 2016, failed to file a grievance on behalf of Joseph Farrell concerning Akal's failure to reinstate his Union Seniority date to his original date of hire upon his return from a medical leave of absence because of arbitrary reasons in violation of Section 8(b)(1)(A) of the National Labor Relations Act ("the Act"). The General Counsel further contends that the Local (1) attempted to cause Akal to discipline David Wehrer, through a complaint filed by Robert Reuther and Daniel Wigley on July 5, 2017, because Wehrer engaged in protected activities, including filing a charge with the National Labor Relations Board ("NLRB") and participating in NLRB

investigations, in violation of Section 8(b)(1)(A) and Section 8(b)(2) of the Act and (2) attempted to cause the Employer to discipline Farrell, through a complaint filed by Reuther on September 27, 2017, because Farrell engaged in protected activities, including filing a grievance concerning his seniority and a charge with the NLRB, in violation of Section 8(b)(1)(A) and Section 8(b)(2) of the Act. A hearing was held before Chief Administrative Law Judge Robert A. Giannasi, Esq. on March 5, 2018. The relevant facts, as adduced on the record, demonstrate that neither the International nor the Local engaged in any violations of the Law

II. FACTUAL BACKGROUND

Contracting employers[1] employ and provide CSOs to the United States Marshal Service ("USMS" or "Marshal Service") to perform security services in the federal courthouses. (Kamage, 12: 12-15). Typically, the Marshal Service's security contract is rebid every 3 to 4 years. (Kamage, 12: 16-18).

Applicants for CSO positions apply directly to the employing company. George Kamage, the District Supervisor at the Scranton, Pennsylvania courthouse since 2011, screens applicants and conducts interviews. When a vacancy arises, Kamage submits the applicants' application packages to the employing company. The company screens the applicants and then submits the applications to the Marshal Service. A background investigation is conducted under the Department of Homeland Security ("DHS") prior to a

[1] As reflected in the record, a series of contracting employers have employed CSOs at the Scranton site including U.S. Protect, MVM, Inc., Akal Security, and most recently Paragon.

further background investigation process conducted through the Office of Personnel Management ("OPM"). (Kamage, 13: 6-25; 14: 1-11). Once the OPM process is complete, the employing company receives notification that it may hire the applicant. (Kamage, 15: 1-3). Full-time CSO positions are bid based on seniority. (Farrell, 75: 12-19).

The Respondents and Akal were most recently parties to an October 1, 2015 to September 30, 2018 collective bargaining agreement. That agreement contained the following provisions pertaining to seniority for bargaining unit members:

> Article 2 - Union Seniority
>
> Section 2.2 – Termination of Seniority
>
> The seniority of an Employee shall be terminated for any of the following reasons:
>
> A. the Employee quits or retires;
>
> B. the Employee is discharged for just cause;
>
> C. a settlement with the Employee has been made for total disability, or for any other reason if the settlement waives further employment rights with the Employer;
>
> D. the Employee is laid off for a continuous period of one hundred eighty (180) calendar day;
>
> E. the Employee is permanently transferred out of the bargaining unit.
>
> Section 2.3 - Reinstatement of Seniority
>
> The seniority of an Employee shall be reinstated for any of the following reasons:

A. An Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire; and

B. An Employee returned to work after overturning a discipline termination shall regain their seniority back to original date of hire.

(Joint Exhibit 1).

Robert Reuther, a CSO in Scranton, was released from his position in July 2008 by the then-contractor MVM, Inc. following an on-the-job injury. (General Counsel Exhibit 23). Reuther was re-hired as a CSO in March 2012. (Kamage, 15: 22-23). When Reuther returned to work, he did not receive union seniority for about a year. (Kamage, 68: 23-24; 69: 11-17). In 2012, Reuther sent a request for assistance to Jeffrey Miller, Director for the International,[2] stating, in part,

> At the advice of our local representatives, I would like for my seniority status to be reviewed. . . . I feel that my seniority should be restored by the fact that I was injured in the performance of my duties as a cso, I kept in contact with my superiors and union reps, and I was encouraged to reapply as soon as I was able to meet the physical standards of the position.

(General Counsel Exhibit 8). Reuther also sent Miller text messages requesting Miller's assistance regarding his seniority starting on January 23, 2013. (Joint Exhibit 8). Miller replied to the initial request, "I will update the company and try to get a response but I want to be clear that no one from the local will protest your seniority reinstatement." (Joint Exhibit 8). On January 28, 2013. Reuther responded that he had spoken to everyone who would be impacted by

[2] Miller has served a Director for the International since November 2010. In that role, Miller oversees and advises 39 CSO locals. (Miller, 166: 1-16).

his seniority reinstatement and that no one had a problem with it. (Joint Exhibit 8). At hearing, Reuther confirmed Miller suggested that he contact everyone who would be affected by his seniority. Reuther contacted those CSOs and no one had a problem. (Reuther, 161: 15-23; 162: 12-18). An actual vote was not conducted at that time as only five CSOs were involved. (Reuther, 163: 4-7).

Thereafter, Miller emailed Maureen Dolan, Labor Relations Specialist for Akal, on February 5, 2013 requesting restoration of Reuther's union and benefit seniority, writing, in part,

> He was hired as a CSO November 8, 2004, he suffered an on the job injury May 5, 2007 while working for US Protect and was placed on Workman's Compensation, [sic] He then received notification that he was being "released without prejudice on June 9, 2009 by the current contract MVM, Inc. while still on an active Workman's Compensation Case . . . .
>
> Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.

(General Counsel Exhibit 16). Dolan replied that the collective bargaining agreement did not come into the issue as Reuther's hire date predated the contract. Dolan indicated that the Company would not object to restoring Reuther's union seniority but would not restore his benefit seniority. (General Counsel Exhibit 16). On February 8, 2013, Miller emailed Dolan further contending that Reuther should have never been fired while on worker's compensation leave and, if never fired, he would be eligible for commensurate benefits. (General Counsel Exhibit 29).

Kamage recalled discussing Reuther's seniority in February 2013. (Kamage, 16: 1-4). During a conversation with his supervisor, Kamage did not object to the return of Reuther's seniority and took no position on the matter. (Kamage, 16: 6-15; 17: 1-4). In 2013, Reuther's "union seniority" was restored but Reuther was not given his "company seniority" used for benefit purposes. (Kamage, 17: 6-18).

On March 1, 2013, Joseph Farrell, the then Secretary/Treasurer for the Local, emailed Miller vigorously objecting to the restoration of Reuther's seniority:

> I am sending this email not only as a union official of Local 129, but also as a bargaining unit member who is adversely affected by this reinstatement of seniority. As I had indicated to you in our telephonic conversations, this action by the International was never discussed nor endorsed by the body of Local 129. . . it appears the International may have acted on behalf of one bargaining unit member, Bob Reuther, absent the approval of the Local.
>
> The decision both to request and grant seniority to Bob adversely impacts five members of the bargaining unit. In this time of impending layoffs, I can say with absolute certainty that of these five, at least two persons, myself and Joseph Williams intend to request the assistance of both the local and International in overturning this action. Certainly there was no transparency in the actions taken, and as I had advised you previously that I, as a union official, was unaware of the actions until I was copied on an email after the decision was rendered.

(General Counsel Exhibit 16). On March 4, 2013, Miller sent a text message to Reuther regarding the situation stating, in part, "you told me everyone at the local was on board with this plan and now I am being accused of not doing the

right thing, I took your word that all was ok and now that does not appear to be the case[.]" (Joint Exhibit 8). Reuther responded, "Well i spoke to people individually and nobody had a problem. Whether they thought i wasnt going to get it or what but i didn't deceive u and my word IS good[.]" (Joint Exhibit 8).

On March 6, 2013, Farrell again emailed Miller regarding the restoration of Reuther's seniority further challenging the action as contrary to the terms of the collective bargaining agreement:

> I am in the process of preparing a grievance for submission to the District Supervisor on this matter. In the interim, I would ask that you contact Maureen Dolan and request that she immediately rescind her directive which reinstated Robert Reuthers seniority until there is time for further investigation by both the Local and International. I submit that your initial request to her was done in error . . . .
>
> The situation which has unfolded has placed the improper burden of proof upon any party who elects now to grieve the seniority restructuring. The CBA is very well defined in this regard, and I believe it was circumvented without due regard for all members rights under the CBA. . . .
>
> Secondly you indicate: *Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.*
>
> I do not believe that Bob Reuther ever received a medical disqualification from the FOH or the USMS. I submit my belief that there was never a medical disqualification to overturn. . . .
>
> I hope that you understand not only my position, but also that of the other aggrieved parties. It is unfortunate that this situation has occurred, however I can assure you that had this issue been properly discussed and voted upon we would not be a this junction. . . .

In the interim I will move forward with the grievance. .

. .

(General Counsel Exhibit 16). After the restoration of Reuther's seniority, Kamage received a grievance from Robert Snell who contended that he was harmed by the restoration of Reuther's seniority. (Kamage, 17: 21-24).

On or about September 27, 2015, Reuther requested that Akal restore his benefits seniority date. Akal denied that request and a grievance was filed on Reuther's behalf. The grievance, however, was not pursued to arbitration. (Joint Exhibit 12, at ¶ 11).

Farrell first began working as a CSO in October 2008. (Farrell, 74: 1). Farrell served as the Secretary/Treasurer for the Local for three years from 2011 to 2014. (Farrell, 76: 24-25; 77:1-3; 111:15-17). While Secretary/Treasurer, Farrell processed a grievance[3] regarding time fraud allegations against several officers who purportedly came in and left early. (Farrell, 76: 20-25). Kamage issued eight or nine officers a written warning including Daniel Wigley, Reuther, Bob Snell, George Price, and Timmy Keiper. (Farrell, 78: 22-24; 79:1-3). The Local processed a grievance concerning the issue and the company denied it as untimely. According to Farrell, Miller evaluated the grievance, determined that it was without merit, and that it would cost the Local $2000 per person. (Farrell, 78: 13-25). The grievance was not processed because the Local felt that the matter was too costly to bring

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[3] The International does not have to approve grievances but will share the cost of arbitrating grievances. (Farrell, 77: 10-18).

to arbitration. (Farrell, 79: 6-15). Farrell testified that Wigley, Reuther, Price, and Snell were upset about the decision. (Farrell, 79: 18-25).

Tom Sivahop, who was the Vice President of the Local when Farrell served as the Secretary/Treasurer, testified that Kamage issued a letter of reprimand to each involved CSO. The Local then filed a late grievance over the issue. (Sivahop, 137: 11-14; 138: 1- 16; 138: 22-23; 139: 1-2). The CSOs, however, wanted to challenge the letters through a private attorney and the Local paid for an assessment of the case. Wigley reported that the attorney gave them a favorable assessment. (Sivahop, 139: 15- 25; 140: 1-9). Thereafter, the Local had a conference call with Miller who notified them that the International would not support the grievance because it was late filed. (Sivahop, 140: 10-21). Thereafter, Sivahop conducted an investigation as to whether the letters still existed in the CSOs' personnel files and determined that no reprimands were actually placed in the involved CSOs' files. (Sivahop, 140: 22- 25; 141: 1-18). Although Reuther and Wigley still sought the Local's support, the Local notified the CSOs that it would not support them since the reprimands did not exist. According to Sivahop, Wigley told Sivahop not to listen to Farrell because Farrell was no fucking good. (Sivahop, 143: 1-24).

In 2014, Farrell was hurt at work and went out on worker's compensation leave. (Kamage, 50: 23-25; 51: 1-4). The Marshal Service maintains requirements that CSOs be medically capable of performing their jobs. (Kamage, 50: 7-16). At the time Farrell was out of work, the Marshal Service also required employees to undergo a yearly physical examination.

(Kamage, 50: 20-21; Miller, 168: 2-12). The Marshal Service does not waive the annual examination requirement for CSOs on worker's compensation leave. (Miller, 172: 11-14). The Marshal Service can claim violations of its contract thereby disqualifying employees from the contract and can also fine the employing company for violations. (Kamage, 55: 1-14).

Farrell testified that Kamage told him that he would not have a physical in November 2014 because he was on workers' compensation leave. (Farrell, 80: 11-18). On December 16, 2014, Kamage emailed Akal's Amanda Manzanares, writing that he had a discussion with Marshal Martin Pane who "pointed out that Farrell had not had a physical in over a year, November is his birth month, and believes that the company is now in violation of the contract because of this issue." (General Counsel Exhibit 25). The Marshal Service notified Akal that it was in violation of the requirement that each employee have an annual physical and disqualified Farrell because he did not have a physical within a year. (Kamage, 51: 11-21; 55: 19-22; 57: 1-6). As a result, Akal removed Farrell from performing services under the contract and removed him from his position as a CSO. (Kamage, 51: 22-25; 52: 1-2).

On or about January 14, 2015, the Employer issued a letter to Farrell stating, in part,

> As you are aware, since approximately March 21, 2014, you have been on a Medical Leave of Absence (LOA) status related to a Worker's Compensation claim. Your medical qualification has lapsed. Your last annual medical examination was taken on November 20, 2013. . . .

> As you are no longer qualified per contractual requirements, you are being removed from performing services under the contract and removed from the Court Security Officer (CSO) position effective today's date, January 14, 2015.
>
> When/if you are again available to perform work under the Contract, and based on the availability of a position, you may be required to repeat the USMS application process again to ensure your suitability and your qualifications for the position of a Court Security Officer.

(Respondent Exhibit 1).[4] Thus, as of January 14, 2015, Farrell was no longer a CSO and was no longer in the bargaining unit. (Kamage, 53: 10-15). To return to work as a CSO, Farrell would have to be cleared medically, reapply and be **rehired** by Akal. (Kamage, 54: 1-8) (emphasis added).

Kamage testified that when an employee is "removed" from the contract that means that the employee is taken off the contract with the Marshal Service. (Kamage, 18: 8-14). Kamage contended that "removal" did not necessarily mean that the employee was "fired" but it could. (Kamage, 17: 8-14). Kamage, however, testified that he believed that the Marshal Service must concur with the employing company in firing an employee but conceded that he was not involved in that process. (Kamage, 15: 6-10).

When an employee is removed from the contract, Kamage submits the name of an applicant to replace the employee as well as a CSO-001 form. (Kamage, 18: 17-24). Kamage testified that, under certain circumstances,

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[4] Farrell testified regarding the contents of the letter, "and further it went on to say that as soon as I was able to return to work, that I could return to my position." (Farrell, 80: 20-25). The letter clearly offered no guarantee that Farrell could return to his position.

employees removed from a contract might have the opportunity to return by reapplying for a position. Kamage testified that employees removed because of a medical disqualification could reapply if they corrected the situation leading to the removal. Kamage contended that "workmen's compensation" fell into that category of removal. (Kamage, 20: 25; 21: 1-11).

On January 20, 2015, Kamage completed a CSO-001 form for Farrell because he was "being replaced off the roster because of a workmen's compensation issue." (Kamage, at 19: 10-14; General Counsel Exhibit 2). The CSO-001 form includes Section 18(e) stating "Disqualified/Removed Due To: □ Medical Disqualification by FOH □ Failure of Weapon Test □ Failure to Provide Medical or Other Required Information □ Background Findings □ Performance Violation." (General Counsel Exhibit 2). Instead of utilizing the printed options, Kamage wrote "Workman's Compensation" on the form as directed by a superior although he was typically not supposed to write on the forms. (Kamage, 19: 15-17; 56: 23-25; 57: 1-8).

Farrell contacted Tim Crume, who at that time was an International representative assigned to the bargaining unit, sending him a copy of Akal's January 14, 2015 letter. Farrell testified that Crume did not know whether or not Farrell was terminated and recommended that he file a grievance. (Farrell, 81: 7-25). On January 20, 2015, Farrell requested that a grievance be filed regarding his wrongful termination, noting that Akal had posted and filled his position as senior LCSO. (Respondent Exhibit 2). Thereafter, a grievance was

filed contending that Farrell was terminated without just cause. (General Counsel Exhibit 9).[5]

Akal responded to the grievance on or about February 17, 2015, writing, in part,

> As you know, this case is a lapsed qualification case and, under the terms of the CBA that USCSO [sic] has negotiated with Akal Security, the matter is explicitly excepted from the grievance procedure; thus it is neither grievable nor arbitrable. . . .
>
> Please note that Joseph Farrell is not currently credentialed to work as a CSO on a USMS contract. As such, Mr. Farrell was removed from the contract on January 14, 2015. His removal from the contract is not the Company's determination of disciplinary action and does not reflect a disciplinary action in the employee's personnel file. . . .
>
> Joseph Farrell is currently an employee of Akal Security, Inc. To return to the USMS contract, he will need to apply to an opening in the USMS program and go through the USMS credentialing process.

(General Counsel Exhibit 10).[6] Crume forwarded the reply to Farrell on February 19, 2015 by email, with Crume writing, in part, "Your letter advised that you were 'removed' but this makes it clear that your employment has been

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[5] Miller testified that when Farrell was unable to complete his annual physical and removed from his position as a CSO, he contacted Tim Crume, an International Director, to evaluate his options. Farrell believed that he was terminated and was looking for assistance in returning to work. (Miller, 171: 7-25; 172: 1-5).

[6] In settlement discussions, Akal's Janet Gunn characterized Farrell's removal as "not a USMS disqualification and not a terminate CSO not currently qualified for work as FAQ and Medical are expired when he is able to qualify let us know[.]" (General Counsel Exhibit 26).

terminated. This is a typical, standard denial letter from Akal." (General Counsel Exhibit 10).

At hearing, despite the clear language of Akal's January 14, 2015 letter requiring Farrell to apply to a vacant position, rather than return to his LCSO position, and go through the credentialing process, Farrell testified that the grievance response indicated, "That I was not terminated. That I was currently an employee of Akal Security, and that as soon as I was able physically to return to work, I would be able to return." (Farrell, 84: 15-17). Indeed, on April 18, 2015, Farrell emailed Crume requesting that personal legal counsel be retained for him as the grievance continued to be processed, writing, in part,

> Akal has given a lowball offer for a workers compensation settlement, and indicated to my Attorney that if I refuse to accept it, they will bring me back to work in a limited duty position. I assume that then I will not have to re-apply as their previous letter stated. Perhaps I was never removed from the contract. My Attorney was calling me to make certain that I would approve of returning in the limited duty position. If they bring me back, I would assume that would end the grievance. I would hope however that I still am covered by union protections under the CBA, however, I don't know how they would handle my medical exam, my weapons qualification, and my use of narcotic painkillers while working. . . .
>
> With regard to the local union, I will reach out to them via certified mail and copy you on the letter with my request for consul [sic]. I am not certain that you are aware, however Jeff Miller certainly is, that the current leadership of the local union holds a personal animus towards me for certain union decisions that were made when I held the office of sec/tres. However, again, I hope that looking at the totality of the circumstance you will understand the need now more than ever for local employment counsel.

(General Counsel Exhibit 11).[7] Farrell testified that he requested that a local attorney be appointed to represent him through the process because he was concerned that he would not get the help he needed because of personal animus with Reuther and Wigley who were on the Local's executive board. (Farrell, 86: 1-10).

On May 13, 2015, Farrell emailed Crume suggesting that the matter could be resolved based on certain conditions, writing, in part,

> 2. That my seniority would be reinstated in that it would be considered over turning a medical qualification. . . .
>
> I submit the only thing I wish to preserve are rights similar to those given to Robert Reuther, who received a workers compensation settlement after an alleged workers compensation injury, and was able to return to the position upon medical clearance with total seniority and able to jump over all applicants.

(General Counsel Exhibit 12). Farrell testified that, at that time, he was concerned that he be properly represented and that he would get his seniority back when he returned like Reuther. (Farrell, 86: 21-25; 87: 1-4). Farrell testified that he was the Secretary/Treasurer for the Local when Reuther returned to work and the return of Reuther's seniority impacted Farrell. (Farrell, 86: 7-10). Farrell testified that Crume did not respond to his concerns. (Farrell, 88: 18-19).

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[7] Farrell testified that he emailed Crume because he was concerned that the company would attempt to bring him back on some sort of limited duty type capacity. (Farrell, 85: 10-15). The email further reveals that Farrell was interested in obtaining information from the Company and having the Union pay for a personal attorney.

Farrell testified that he was cleared to return to work in April or May of 2015. (Farrell, 223: 15-19). Kamage testified that he reopened applications for the Scranton location in June 2015 and Farrell applied for a position. Kamage testified that he attempted to contact Farrell. At some point, Kamage had a conversation with Farrell during which Farrell contended that Kamage was engaged in a "deliberate ploy" not to re-hire him. (Kamage, 21: 14-24).

If the Marshal Service disqualifies a CSO, the matter is not subject to arbitration although there is a governmental appeal process. (Miller, 172: 6-10). The International, however, processed Farrell's grievance to arbitration, even after the Company raised the Respondents' inability to arbitrate the grievance in its response, to provide it with leverage to engage in further discussion on the matter. (General Counsel Exhibit 24; Miller, 196: 7-9; see General Counsel Exhibit 10).

On August 10, 2015, Desiree Sullivan, President of the International, emailed Dolan proposing that the parties draft a Settlement stating that Farrell "will be able to re-apply to his former position and be hired as new employee as long as he passes all of the necessary requirements." (General Counsel Exhibit 27). On September 9, 2015, Dolan responded to the International's draft of a settlement agreement making certain changes to the proposed language:

> 1. Akal agrees that if and when Joseph Farrell becomes available to perform work under the USMS Contract, he will be eligible to repeat the USMS application process to ensure his suitability and qualifications. Should he be suitable and qualified, he will be eligible for hire to fill a vacant position, should a vacant position become available.. ~~will be provided with the~~

~~opportunity to re-apply to his [former position MD1] once he is medically cleared to do so.~~

2. ~~Akal agrees that Joseph Farrell will be considered [eligible for re-employment upon receiving any/all necessary medical records] [MD2] from his physician declaring him fit for duty.~~

(General Counsel Exhibit 28).

Farrell learned that the grievance was settled when he received a copy of the settlement agreement on September 16, 2015. (Farrell, 88: 22-23; General Counsel Exhibit 13). According to Farrell, the settlement agreement stated the "same thing" as the initial letter he received from Akal and did not reference his seniority. (General Counsel Exhibit 10).

On September 16, 2015, Farrell emailed Crume regarding the settlement agreement expressing dissatisfaction:

> As I had indicated to you, I do not agree with this resolution and was not consulted regarding the acceptance of this agreement prior to its implementation. My previous discussions with you revolved around immediate return to work upon medical clearance. Further we had discussed seniority upon return, similar to that obtained for Robert Reuther.

(General Counsel Exhibit 14). Farrell testified that the Union had ignored his request for seniority. (Farrell, 90: 11-13). On September 17, 2015, Robert Kapitan, then counsel for the International, replied to Farrell indicating that they had done all that they could for Farrell in the case and further advising that there was no appeals process. (General Counsel Exhibit 14). On September 17, 2015, Farrell responded to Kapitan writing, in part,

> AKALS refusal to provide me with my annual medical examination, and then terminate my employment under the contract based on that lack of examination, certainly flies in the face of the letter and spirit of the CBA. . . . I respectfully disagree that the Local and International Unions had done all they could for me on this case. I appreciate your offer of assistance moving forward in the application process, and God willing perhaps will get to that stage.[8]

(General Counsel Exhibit 14) (underline added).

Prior to returning to work, Farrell had to submit his information and re-apply for a position. (Farrell, 112: 17-20). Farrell elicited support from the International in attempting to return to work and Miller advocated for him. (Farrell, 112: 1-10). Miller called Sean Engelin, Akal's Labor Relations Manager, concerning the issue as well as sending multiple emails. (Miller, 179: 13- 25; Respondent Exhibits 4 & 5).[9] Miller further filed a charge with the NLRB to attempt to enforce the settlement agreement. (Respondent Exhibits 6 & 7; Miller, 180: 2-4; 182: 16-23). In 2016, Akal advised Kamage that he had to re-hire Farrell under the terms of that settlement agreement. (Kamage, 22: 2-3).[10]

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[8] Farrell testified that he had been cleared to return to work in April or May of 2015. His September 17, 2015 response to Kapitan suggesting that he might never get to the application stage, supra, at the very least, shows his penchant for exaggeration.

[9] On December 11, 2015, Miller emailed Engelin regarding an open CSO position in Scranton. (Respondent Exhibit 4).

[10] In September 2015, Kamage received a settlement agreement that indicated, according to Kamage, that he could hire Farrell. (Kamage, 21: 14-24).

Kamage testified that, prior to Farrell's return in October 2016, he was posting the seniority list while Wigley and Reuther were in his office. Kamage said that he was going to put Farrell's name on the seniority list. Kamage testified that they responded, no, he is not going to get his seniority back. Kamage recalled stating that Bob Reuther did. Kamage testified that someone responded that it was a different issue and that they checked with the International. (Kamage, 22: 12-19).

Wigley and Reuther became the President and Vice President of the Local, respectively, in approximately 2014 through an uncontested election after the prior Local officers resigned. (Wigley, 210: 3-11; 210: 20-15; 211: 5-9; 212: 14-15). When the Local learned that Farrell was inquiring about his seniority prior to his return, the Local contacted Miller for an evaluation. (Wigley, 214: 7-17). At hearing, Miller explained that Farrell did not meet the qualifications for reinstatement of seniority under the collective bargaining agreement. (Miller, 188: 16-19). Miller opined that getting better from an injury did not constitute "overturning" a medical disqualification under Article 2, Section 2.3(A) of the contract since to overturn a medical disqualification a CSO had to prove that the testing was flawed at the time of the removal determination. (Miller, 188: 20-25).[11] Miller believed that Farrell, instead, fell under the terms of Article 2, Section 2.2(E) of the collective bargaining

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[11] CSOs have limited options to appeal medical disqualifications. After an initial examination, a CSO has an opportunity to take a secondary test. If the CSO fails the secondary test, the CSO can go to his or her treating physician or another agent to show that an improper determination was made. (Miller, 169: 16-25; 170: 1- 25).

agreement. (Miller, 190: 2-5). Farrell was transferred out of the unit when he was no longer medically qualified to perform his job as a CSO and, thereafter, was no longer a member of the bargaining unit. (Miller, 190: 2-8; 191: 9-12).

Miller recalled that he discussed with Wigley and Reuther the lack of a mechanism to reinstate seniority after a lengthy separation in the collective bargaining agreement. Miller related his interaction with Reuther and Farrell regarding the reinstatement of Reuther's seniority in 2013. Miller had received communications from Farrell indicating that the collective bargaining agreement did not authorize the reinstatement of Reuther's seniority and that the reinstatement of Reuther's seniority was done without the participation of the Local and without the opportunity for the Local to vote on the matter. (Miller, 185: 1-25).

At hearing, Miller indicated that he had taken a "long shot" in arguing that Reuther overturned a medical disqualification in 2013. According to Miller, he would have had no standing to make the argument if the Employer protested. (Miller, 186: 1- 25). At hearing, Miller explained that in Reuther's case, he used his relationship with the Company to do something that the collective bargaining agreement did not support because, at the time, he thought it was the right thing to do. However, based on feedback from the Local, it became abundantly clear to him that he had not acted in the Local's best interests. (Miller, 187: 1-17). Miller felt that he could not advocate for the return of Farrell's seniority based on the language of the collective bargaining agreement and the content of the settlement agreement. Miller told Wigley and

Reuther to ask the membership if they wanted to modify the collective bargaining agreement so that he could advocate for Farrell if he was authorized to do so. (Miller, 188: 1-5).

At hearing, Wigley confirmed that the International advised the Local to poll the membership on the issue after the Local sought advice from Miller. As a result, the Local took a vote on the issue. Wigley understood that following the vote, the Local would have to modify the collective bargaining agreement to allow for the return of Farrell's seniority. (Wigley, 214: 18-23; Reuther, 158: 21-25; 159: 1-7). The 12 CSOs who would have been impacted by Farrell's seniority told the Local that if Farrell's seniority was restored that they would file a class action grievance. (Reuther, 163: 14-25).

The vote was conducted on October 12, 2016. (Wigley, 214: 24-25). Wigley explained that notice of the vote was provided by word of mouth. Wigley and Reuther verbally explained the issue over seniority and indicated that if there was a favorable vote, they would make amendments to the contract. (Wigley, 215: 3-25). Wigley testified that the ballots, stating "Reinstate Seniority for Joe Farrell," were placed in a sealed box and CSOs would check off their names as they cast their ballots. (Wigley, 216: 14-18; Respondent Exhibit 8).

Wigley testified that he had a discussion about the vote with whoever asked about it. Wigley recalled stating that the vote was the first step and that they would then have to have a meeting to discuss changes to the collective

bargaining agreement. Wigley recalled speaking with Kevin Kugler, Gillott, Weis, Nicholas, Colan, and Wehrer. (Wigley, 221: 8-16).

Wehrer testified that Wigley came to him while he was on post and said that they were going to vote on Farrell's seniority to see whether they should give Farrell his seniority back. CSO Kevin Kugler took over Wehrer's post while he went to the break room. Wehrer testified that Wigley brought out a box and handed him a small piece of blank paper. Wigley told Wehrer to write yes or no on the paper. (Wehrer, 124: 4-13; 124: 14-25; 125: 1 –5). Wehrer put his vote in the box and told Wigley that he voted for Farrell to get his seniority back. Wigley replied, that's fine. (Wehrer, 125: 5-9). Wehrer testified that he had no conversations with Wigley about changing the collective bargaining agreement. (Wehrer, 226: 1-7).[12] Farrell came into the building later that day and Wehrer told him that they were having a vote on whether or not Farrell got his seniority back. (Wehrer, 125: 12-18).

Sivahop testified that he learned about the vote on Farrell's seniority through word of mouth. (Sivahop, 147: 1-6). Wigley told Sivahop that they were going to hold a vote on whether to give Farrell his seniority back. Sivahop went into the break room and saw a shoebox and blank pieces of paper next to it. He was told to vote yes or no and put his vote in the shoebox. (Sivahop, 147: 16-25; 148: 1-6). Thereafter, Wigley asked Sivahop to watch the vote

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[12] Wehrer also stated that the ballots for the vote were blank. (See Respondent Exhibit 8). Wehrer's memory of the events may not be entirely accurate.

count, which was overwhelmingly not in favor of Farrell getting his seniority back. (Sivahop, 148: 8-25).

Michael Martin, a CSO, testified that Wigley or Reuther approached him on the day of the vote and said that they were going to take a vote on whether Farrell got his seniority back. Martin could not recall any discussion of changing the collective bargaining agreement. (Martin, 151: 21-25; 152: 1-6). Martin testified that he voted against Farrell getting his seniority back because Farrell would have gone ahead of him on the seniority list. (Martin, 152: 11-18).

Farrell began working as a CSO again on October 13, 2016 (Kamage, 65: 4-10) as a shared-time employee scheduled to work 40 hours every two weeks and other additional time to fill-in for vacations and sick calls as necessary. (Farrell, 74: 13-19; 74: 23-25; 75: 1-3).[13] When Farrell went out on worker's compensation leave, Farrell was the 18th officer on the seniority list. When he returned in October 2016, Farrell was the 24th officer on the seniority list out of 24 officers. (Farrell, 75: 10-21).

When Farrell returned to work in October 2016, he spoke with Wehrer who told him that a vote was taken on whether or not Farrell would get his seniority back. (Farrell, 91: 3-13). Farrell then went to speak to Kamage.[14] Farrell asked Wigley for a copy of the bylaws and collective bargaining

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[13] Farrell has traveled to other locations to work additional hours. (Farrell, 74: 13-19).

[14] Farrell approached Kamage to question his seniority on his first day back to work. Kamage testified that Farrell filed two grievances. (Kamage, 23: 9-25).

agreement. Farrell also called Miller and told him that they took a vote on whether he should get his seniority back and that he wanted to file a grievance. Farrell told Miller that when he asked for the bylaws and collective bargaining agreement Wigley said, when you become a union member, we'll give it to you. Miller responded, you're a union member. (Farrell, 92: 2-25).

Farrell also sent Miller a copy of a letter he submitted to Kamage. (Farrell, 92: 2-25). Farrell's letter stated, in part,

> 4. As a result of a grievance settlement agreement of September 15, 2015, I was rehired and returned to work on October 13, 2016.
>
> 5. Pursuant to Article 2, Section 2.3 of the collective bargaining agreement, an employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.

(General Counsel Exhibit 15). On October 16, 2013, Farrell also forwarded Miller a series of emails exchanged regarding the reinstatement of Reuther's seniority and Farrell's prior objection to it as contrary to the collective bargaining agreement. (General Counsel Exhibit 16).

On November 3, 2016, Miller provided a written opinion about Farrell's seniority to the Local copying Farrell so that the Local could share the evaluation with the bargaining unit. (Miller, 187: 1-8; Farrell, 95: 4-15; General Counsel Exhibit 17). Miller testified it was his position that an employee on worker's compensation leave should not be terminated or lose benefits prior to being counseled by Farrell in 2013 that his position was incorrect and not supported by the Local. (Miller, 207: 7-11). Miller

acknowledged that he made a mistake in asking for Reuther's seniority back. (Miller, 208: 1-17). Miller's letter stated, in part,

> In October 2016, you contacted me for background and guidance regarding the request for Seniority and Anniversary date reinstatement of returning CSO Joseph Farrell. . . .
>
> The Executive Board was advised that neither the Settlement Agreement nor the CBA allow reinstatement of the Seniority Rights and or Anniversary Date of the returning member. The Executive Board was asked to address the matter with the Membership to see if the Membership expressed interest in having me attempt to modify the terms and conditions of the Collective Bargaining Agreement to attempt to make a case for reinstatement of Status and/or benefits. The Executive Board accomplished this endeavor reporting that the Membership did not desire to alter the terms and conditions of the CBA at this time and would adhere to the requirements of the CBA and the Executed Settlement Agreement.
>
> Through separate conversations, returning CSO Joseph Farrell communicated with me a similar situation occurring in 2013 when I took independent action in good faith to assist a returning CSO (Robert Kevin Reuther) in an attempt at reinstatement of benefits. That resulted in the reinstatement of that Members Union Seniority Date only and was strongly opposed by the Executive Board at the time which included CSO Joseph Farrell.
>
> It can clearly be established that the action taken in 2013 was an exceptional event not supported by the CBA, any Executed Settlement Agreement, or the Executive Board of UGSOA Local 129 to include CSO Joseph Farrell.

(General Counsel Exhibit 17). On October 27, 2016, Farrell requested that Miller provide a copy of meeting minutes regarding the vote on his seniority. (General Counsel Exhibit 18).

On November 7, 2016, Frank Tunis, an attorney representing Farrell, requested that the Union initiate all available grievance procedures on behalf of Farrell regarding the failure to restore his seniority. (General Counsel Exhibit 19). On December 2, 2016, Siri Chand Khalsa, Esq., General Counsel for Akal, responded that the Company would not "publish a change to the seniority list unless we have notification from the union that they wish for a change to be made." (General Counsel Exhibit 20). On January 23, 2017, Miller replied to Tunis by email indicating,

> The Local and International operate under the collective understanding that pursuant to the Collective Bargaining Agreement on January 14, 2015 CSO Farrell was separated from the bargaining unit, pursuant to Section 2.2 E. The International processed a grievance regarding that separation which resulted in a Settlement Agreement defining the certain terms and conditions of a return. That Agreement did not invoke any additional remedies other than the ability to re apply with preferential consideration. Once reinstated his Seniority was Granted consistent with the Collective Bargaining Agreement and his subsequent re-hire as a CSO.

(General Counsel Exhibit 20).

In July 2017, Sivahop testified that he spoke with Reuther regarding Farrell's seniority when Farrell asked him to act as a "middle man" for him. Sivahop told Reuther that he set the precedent when he returned from worker's compensation leave and got his seniority back. Reuther told Sivahop that it was not up to him and that it was up to Wigley. Sivahop told Reuther that Farrell would drop his case if his seniority was restored. (Sivahop, 143: 1-25; 144: 19-25; 145: 1-23).

CSOs may file verbal, written, and anonymous complaints. (Kamage, 24: 7-10). Kamage conducts investigations and provides a copy of his report to his supervisors. (Kamage, 25: 2-4). Describing the work conditions at the Scranton courthouse, Kamage commented,

> Oh, I mean these people are just at each other. This is a constant battle back and forth with them fighting over many things, many anonymous complaints. I've had five of them against me.

(Kamage, 67: 7-10).

Kamage testified that Reuther and Farrell did not like one another. (Kamage, 36: 10-25). For his part, Farrell testified that his relationship with Wigley and Reuther was terrible. (Farrell, 103: 5-12). A day or two following Farrell's return to work, Farrell filed a complaint that the Local was conducting union business on duty. Kamage questioned Wigley and Reuther about the allegation. Kamage then notified Farrell that he concluded that they were not conducting union business on duty. (Kamage, 25: 20-25; 26: 1-6). In or about October 2016, an anonymous complaint was also filed against Farrell which was investigated by David McClintock, Akal's contract manager. (Kamage, 26: 10- 17).

Farrell filed a further complaint against Wigley alleging that he called Farrell a lowlife scumbag. (Kamage, 26: 23-25). According to Kamage, Wehrer passed on the statement to Farrell and Wigley denied making the statement. (Kamage, 26: 23-25; 27: 10-19). Wigley testified that he never called Farrell a lowlife scumbag and that Kamage completed an investigation in which he found the allegation unsustained. (Wigley, 219: 9-25).

The Marshal Service issued an order in 2014 prohibiting the use of cell phones on duty. (Kamage, 29: 20-22; General Counsel Exhibit 3).[15] In August 2017, Kamage again circulated the cell phone policy to the CSOs. (Kamage, 33: 10-17; General Counsel Exhibits 4 & 5). Kamage testified that in September 2017, Reuther indicated that two other CSOs saw Farrell wearing an iWatch. (Kamage, 29: 6-13; 31: 21-25). Reuther would not identify the CSOs because they came to him in confidence. Kamage asked Reuther why they would do that and Reuther replied that he had access to Kamage's office. (Kamage, 32: 10-13). Reuther indicated that the CSOs intended to speak to the Chief Deputy Marshal. (Kamage, 33: 20-25). During the conversation, Reuther told Kamage that other CSOs were interested in wearing the iWatch, if permitted, and Reuther was looking for clarification as to whether the iWatch was permitted. According to Kamage, he told Reuther to wear the iWatch. (Kamage, 67: 19-25; 68: 1-2). Reuther testified that he did not approach Kamage as a union representative. (Reuther, 154: 13-14).

Thereafter, Kamage had the LCSOs check on Farrell's iWatch and Farrell immediately came into Kamage's office. Farrell explained that the iWatch could not work, as a phone, unless he had his cell phone on his person. (Kamage, 30: 16-25). Kamage consulted with William Pugh, from the Marshal Service, who agreed that the iWatch was not impermissible as long as it did not have phone capability. (Kamage, 31: 8-14). After Farrell left Kamage's office,

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[15] Reuther testified that he and Wigley asked Kamage if an iWatch was considered a personal electronic device when the directive came out. Kamage indicated that he did. (Reuther, 154: 19-25).

Reuther returned indicating that Farrell had called him a rat. (Kamage, 33: 1-6). Kamage explained his conversation with Pugh to Reuther. Reuther indicated that a wire could be put into the watch to give it reception. Reuther asked to make a complaint about the rat comment. Reuther later made a complaint to the complaint hotline. (Kamage, 36: 10-25).

Farrell testified that in September 2017, Edward Popil, a LCSO, called and told him to take off his watch stating, they told George your watch is a telephone. Farrell then went to speak with Kamage and explained that his iWatch could send emails when in close proximity to his phone but otherwise functioned as a watch. (Farrell, 104: 15-25; 105: 1-10). Kamage told Farrell that Reuther made the complaint. (Farrell, 104: 10-13). Farrell then spoke with Reuther about the iWatch. Farrell testified that Reuther told Farrell that the guys were complaining. (Farrell, 105: 1-25). Farrell went to speak to Kamage, who had spoken to Pugh and indicated that there was no problem with wearing the iWatch. (Farrell, 106: 1-2).

After speaking to Kamage, Farrell testified that he went to the Control Room. Craig Kerry, the Acting LCSO, and Wigley were in the Control Room at that time. Farrell said, I can't believe it, I just got ratted out for wearing a watch that my kids got me for Father's Day. According to Farrell, Wigley replied, you're the biggest rat in this place. (Farrell, 106: 3-11).

Farrell testified that on November 24, 2017, he went on a lunch break and saw a voicemail on his phone from an unknown number. According to Farrell, Reuther left a message stating, "turn your fucking wrist over, Joe; turn

your fucking hand over, Joe; come on, give in, give in, turn your fucking hand over." (Farrell, 107: 18-24). Farrell testified that there was another voice saying, "zoom in on that, zoom in on that" before it continues with them saying, "we got him, now we got him, we got him[.]" (Farrell, 107: 1-13).

Kamage recalled that Farrell reported that he had received a "tape recording on his telephone that was very vulgar in nature." (Kamage, 28: 5-17). According to Kamage, Farrell indicated that he was going to file criminal charges. Kamage suggested that Farrell first approach the Marshal Service. (Kamage, 28: 5-17). Bob McCarthy from FPS conducted an investigation of Farrell's complaint regarding the phone message. (Kamage, 37: 20-23). As a part of the investigation, he interviewed Reuther who denied knowing about the phone call. (Kamage, 38: 1-5).

McCarthy then interviewed Farrell who played the recording. Kamage testified that ten seconds into the recording he heard the statement, "turn that fucking hand over, Joe; turn that fucking hand over, Joe"[16] and that later in the recording he heard the statement, "We got him." (38: 10-17). Kamage also testified that "zoom that camera in" was a statement made on the recording. (38: 20-25). Kamage concluded that Reuther made the call to Farrell by listening to the tape. (Kamage, 40: 1-3).

Kamage testified that he then reviewed the tapes from the Control Room. Kamage indicated that the cameras were zoomed in on Farrell for the length of

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16 The parties have stipulated that the tape includes the statements, "turn that fucking hand over, Joe, turn that fucking hand over, Joe." (Joint Exhibit 6). The remainder of the 3-minute recording is garbled and inaudible. (Joint Exhibit 6(a)).

his duty corresponding to the time of the phone call. Reuther was assigned to the control room at that time. (Kamage, 38: 20-25; 39: 5-9). Thereafter, Kamage interviewed Reuther concerning the cameras. Reuther stated that he was watching Farrell to determine whether to buy an iWatch. Kamage testified that Reuther said, you saw him tap his watch. Kamage responded that it did not indicate that Farrell had a cell phone or that he was on the Internet. (Kamage: 41, 1-9).

Wehrer testified that his relationship with Reuther changed in 2015. (Wehrer, 115: 24-25). Wehrer called Farrell while he was out on worker's compensation leave. Wehrer contended that harassment against him by Reuther began when Reuther found out Wehrer and Farrell were friends. (Wehrer, 116: 1-9). In July 2017, Wehrer contacted Miller by letter regarding the alleged harassment. (Wehrer, 120: 1-15). Wehrer described the alleged harassment writing,

> We discussed the workplace harassment that had been directed towards me while working at the Scranton Courthouse. Specifically, anonymous complaints of body odor, an anonymous complaint that I had placed my holstered gun on the table while putting on my jacket, Lysol being utilized to spray chairs in which I sat, changing of the name plate on my locker, and a falsification an official government log by Robert Reuther indicating that I did not properly completed my duties were to name a few. . . .
>
> Shortly after that withdrawal, harassment again picked up. My assigned radio was tampered with, and Bob Reuther, Vice-President of Local 129 made a complaint with George Kamage of AKAL indicating that I was harassing him. The basis of this complaint was that I had requested an investigation on what I had

> previously told you, that I believed I was subjected to workplace harassment. . . .

(Respondent Exhibit 3). Farrell edited the draft of Wehrer's letter. (Wehrer, 133: 15- 25). Miller told Wehrer that it was a Local matter and said that he would speak to Wigley and Reuther. (Wehrer, 120: 1-15).

Wehrer testified that his letter constituted his complete list of complaints and that he made the same complaint to Kamage. (Wehrer, 127: 14-21). With respect to the falsification allegation, Reuther wrote that Wehrer did not check Post 2 in the log. Wehrer noticed the notation and was upset because it could have resulted in him suffering disciplinary action. Wehrer then filed an incident report contending that Reuther's actions constituted harassment and a hostile work situation. McClintock conducted an investigation but Wehrer was not aware of the outcome. (Wehrer, 117: 13 -25; 118: 1-25; 119: 1-24). Wehrer testified that Kamage also conducted an investigation and found in favor of Wehrer regarding the allegation about securing the post but did not tell Wehrer he found in favor of him regarding the other complaints.[17]

Wehrer testified that he put his loaded gun on a table in a holster. (Wehrer, 116: 10-16). Kamage thereafter told Wehrer that he was investigating him because he left his gun on the table. (Wehrer, 116: 19-22). Both Popil and Reuther challenged Wehrer for leaving his gun on the table. (Wehrer, 129: 1-25). According to Wehrer, Popil admonished him for putting the gun on the

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[17] Wehrer complained that Reuther indicated that he did not cover his post on a form. (Kamage, 41: 16-25). Reuther, when interviewed, indicated that Wehrer did not cover the post the way he was supposed to. (Kamage, 42: 1-3). McClintock investigated the complaint. (Kamage, 43: 4-9).

table. Wehrer said he would not do it again. Reuther challenged Wehrer when he again put his gun on the table. (Wehrer, 131: 4-17).[18]

Further, Wehrer testified that he was called into Popil's office when a group of people said that Wehrer had body odor. Popil told Wehrer to take care of it. Wehrer testified that Reuther would spray down chairs he sat in when he left. (Wehrer, 117: 1-10). Wehrer admitted that he was unsure that Reuther ever made a complaint about his body odor. (Wehrer: 128: 10-13).

Wehrer testified that the name plates were swapped on his and Farrell's lockers but he did not know who did that. Wehrer testified that he did not accuse Reuther of doing it. (Wehrer, 132: 1-12).

Wehrer contended that his radio was tampered with but did not specifically accuse Reuther. Wehrer admitted that he did not know who changed his radio and admitted he should have checked the radio. (Wehrer, 132: 16-25; 133: 1-10).

Wehrer testified that he was interviewed by Attorney Tisdale regarding the vote on Farrell's seniority. During the conversation, he spoke with Tisdale about the harassment. (Wehrer, 122: 19-25; 123: 1-6). Wehrer then filed his own charge with the NLRB. (Wehrer, 123: 1-6). On March 20, 2017, Wehrer filed a charge, Case No. 04-CB-195249, alleging that the Local had restrained or coerced employees in the exercise of rights protected by Section 7 by

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[18] In September 2015, Kamage investigated a complaint against Wehrer alleging that he put his holstered pistol on the table as he was gearing up and that Wehrer was a safety hazard during the 2014 qualification. Wehrer was admonished for the gun issue. Kamage determined that in the 2014 qualification, Wehrer was nervous and turned with the gun but the issue was corrected during the 2015 qualification. (Kamage, 43: 12-25).

harassing Wehrer for arbitrary, bad faith, or discriminatory reasons. Wehrer withdrew his charge on June 28, 2017 after Tisdale found insufficient evidence to support it. (Joint Exhibit 5; Joint Exhibit 12, at ¶ 5; Wehrer, 123: 7-15). Wehrer testified that two weeks later, Kamage told him he was conducting an investigation because, "Reuther filed a complaint with me complaining that you complained about him to the National Labor Relations Board." (Wehrer, 123: 15-24).[19]

In July 2017, Kamage testified that Reuther came to his office with Wigley. Reuther gave Kamage a written complaint alleging that Wehrer was harassing him. Kamage asked why Wigley was there and Reuther replied that he wanted union representation. (Kamage, 44: 16-25; 45: 1-2). The written complaint stated, in part,

> On November 14th 2016, I Robert Reuther, while employed as a court security officer was the subject of a false harassment claim by fellow employee David Wehrer. Mr. Wehrer made this false claim to the employer, Akal Security. After Mr. Wehrer was unsuccessful with this claim, he then went on to report another false harassment claim to the National Labor Relations Board on March 20th 2017. On May 1st 2017 Mr. Wehrer attempted to place a grievance at my expense for one hour of overtime that I had received. . . . I have been targeted by this man which I believe is because of my position as a local union official. This is discrimination under a number of federal laws which prohibit this type of harassment of a protected class. I expect this matter to be addressed forcefully as has been in the past when one employee made just one false claim against another officer.

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[19] Wehrer's testimony about how Kamage explained the nature of Reuther's complaint is in sharp contrast to Kamage's testimony that he told Reuther he would not touch the reference to Wehrer's unfair labor practice charge "with a 10-foot pole." (Kamage, 46: 13-15).

(General Counsel Exhibit 6).[20] Kamage investigated the July 2017 complaint. Kamage concluded that the false harassment claim referred to the Wehrer's complaint when Reuther reported that he was not covering his post. Kamage further indicated that he would not investigate Wehrer for filing an NLRB charge. (Kamage, 46: 5-18). Kamage recalled that Sivahop, but not Wehrer had made a complaint to Kamage about Reuther's overtime, which did not have merit. (Kamage, 65: 18-19).

Wigley testified that he did not join Reuther in his complaint to Kamage in July 2017. (Wigley, 220: 3-11). Wigley did not make any complaints about Wehrer to Kamage. (Wigley, 220: 12-14). In contrast to Kamage's testimony, Wigley recalled that Reuther went to Kamage multiple times with regard to Wehrer and he could not recall being present. (Wigley, 222: 6-15).

Reuther testified that he did not go to Wehrer when he thought Wehrer was harassing him. He had previously told Wehrer that he did not want to have any contact with him because he did not want to disrupt the workplace. (Reuther, 155: 1-6). Reuther testified that he made the complaint against Wehrer because he wanted to clear his name prior to a new company taking over the contract with the Marshal Service. (Reuther, 155: 13-17; 155: 18-21). Reuther wanted the Company to discipline Wehrer because he thought it would stop Wehrer. (Reuther, 156: 1-3).

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[20] Reuther did not sign the letter as Vice President of the Local, did not indicate that he was filing the complaint on behalf of the Local, or use letterhead to file the complaint.

Wehrer testified that in September 2017, Wigley and Reuther came out while he was working Post 3. (Wehrer, 121: 22-25). Wehrer testified that Reuther said to him, oh, you want to drop, do you want to bury the hatchet. Wehrer testified that he replied, yeah I'm tired of this, I'd like to bury the hatchet. Wehrer testified that Wigley said, did you write a letter to Miller and he responded yes. According to Wehrer, Wigley said, you're fuck [sic], we don't want to have nothing to do with you. Reuther said, we are not burying the hatchet. (Wehrer, 122: 1-12). When Wigley relieved Wehrer from his next post in the Control Room, Wehrer testified that he said, you finally got that letter I forwarded to Miller. According to Wehrer, he and Wigley then got into a heated argument. Wehrer testified that during the conversation Wigley said that he told him to stay away from Farrell and that Farrell was a no good, lowlife scumbag. (Wehrer, 135: 17-25; 136: 1-8).

Wigley testified that Wehrer came to Wigley prior to Wigley learning about Wehrer's complaint to the International. Wehrer wanted to talk to Wigley and Reuther about burying the hatchet. Wigley told Wehrer that it would take time and told him to leave Reuther alone. Wigley learned about Wehrer's complaint to Miller that day at about noon. Wigley then approached Wehrer stating, did you just say you wanted to make amends and now you are slamming us with a letter to the International, what is going on, how do you expect us to react to that. Wigley further indicated that he did not trust Wehrer anymore and that he did not want to deal with him. Wigley told Wehrer to let him know if he had job-related issues but did not want to have

any other discussions with him. Wigley testified that he did not tell Wehrer, you are fucked now. (Wigley, 218: 3-25; 219: 1-6). Wigley testified that he never called Farrell a lowlife scumbag and that Kamage completed an investigation in which he found the allegation unsustained. (Wigley, 219: 9-25).

Wehrer admitted that he never heard Wigley and Reuther say that they wanted to get him fired and Kamage never indicated that they were trying to get him fired. (Wehrer, 134: 2-10).

Wehrer also filed a complaint alleging that Mr. Bruce, the custodial manager, told Wehrer that Reuther said he was a no good, fucking bum. Bruce denied it. (Kamage, 66: 12-23).

III. ARGUMENT

The General Counsel has not met its burden to show that Respondents failed to act with respect to Farrell's seniority for any arbitrary, discriminatory, or bad faith reasons. Contrary to the General Counsel's contentions, Farrell did not simply return from a medical leave. Farrell, instead, was removed from his position as a CSO and from the bargaining unit for over a year and was rehired into a position as a new employee only through a re-application process facilitated by Respondents. The evidence presented at hearing shows that Respondents dealt with Farrell's seniority based upon a good faith interpretation of the collective bargaining agreement that indicated that Farrell had lost his past seniority upon his permanent transfer out of the bargaining unit, amounting to a constructive discharge. Indeed, Farrell himself had

advocated for that interpretation of the collective bargaining agreement's language in the past.

The General Counsel has similarly failed to show that the Local attempted to cause the Employer to discipline, or otherwise breached its duty of fair representation to, either Farrell or Wehrer because of their participation in protected activities. While Reuther complained about Farrell and Wehrer, he was acting as an individual, and the General Counsel has failed to meet its burden to show that Reuther engaged in those acts as an agent of the Local. The record is rife with evidence of constant individual complaints filed by CSOs against one another[21] – Reuther's complaints about Farrell and Wehrer are no different from the multitude of other individually-initiated squabbles captured in the evidence.

1. The Allegations That Respondents Acted Unlawfully With Respect To The Reinstatement Of Farrell's Seniority Should Be Dismissed As Untimely.

Foremost, the allegations that Respondents acted unlawfully with respect to the reinstatement of Farrell's seniority should be dismissed as untimely. Farrell filed his unfair labor practice charge challenging Respondents' actions with respect to the reinstatement of his seniority on February 1, 2017 (General Counsel Exhibit 1(a)) more than a year after he first learned that Respondents would not seek reinstatement of his seniority.

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[21] Indeed, the evidence shows that Wehrer filed a complaint alleging that Reuther was harassing him based on certain incidents even though Wehrer admitted that he did not know whether Reuther was even involved in those events. Such an admission strongly calls into question Wehrer's credibility regarding his interactions with Reuther and Wigley.

"Section 10(b) states that no complaint shall issue based on any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." Alternative Services, Inc., 344 N.L.R.B. 824, 825 (2005). The 10(b) period begins to run when the aggrieved party has received actual or constructive notice of the conduct that constitutes the alleged unfair labor practice. Concourse Nursing Home, 328 N.L.R.B. 692, 694 (1999).

Farrell had notice that Respondents would not seek reinstatement of his seniority in September 2015 when Respondents resolved the grievance regarding his January 2015 removal from the bargaining unit. At that time, Farrell had clear notice that Respondents would not seek restoration of his seniority as a part of his return to work. On May 13, 2015, Farrell emailed the International suggesting certain conditions for the resolution of his grievance including that his "seniority would be reinstated in that it would be considered over turning a medical qualification. . . ." (General Counsel Exhibit 12).[22]

Thereafter, Farrell received a copy of the settlement agreement on September 16, 2015, providing for his return to work to a vacant position when such a position became available, rather than his former position as senior LCSO, upon Farrell repeating the application process. The settlement agreement made no provision for the restoration of Farrell's seniority and, in fact, explicitly provided that the terms of the agreement satisfied all make-whole obligations owed to Farrell:

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[22] If Farrell felt he was, in fact, overturning a medical disqualification upon his return to work, it is unclear why he would have requested that a settlement agreement contain language specifying that his situation be "considered" as such.

2. The parties recognize, understand and agree that by the above described actions, Akal has fully satisfied all of its reinstatement and make whole obligations.

(General Counsel Exhibit 2). On September 16, 2015, Farrell emailed the International expressly noting his dissatisfaction with the settlement agreement because it failed to provide for the reinstatement of his seniority, writing in part, "I do not agree with this resolution . . . . Further, we had discussed seniority upon return, similar to that obtained for Robert Reuther." (General Counsel Exhibit 14). Farrell further testified at hearing that Respondents had ignored his request for seniority. (Farrell, 90: 11-13). On September 17, 2015, Kapitan, the then counsel for the International, responded to Farrell's protestations indicating that Respondents "have done all we can for you in this case" and indicating that there was no appeals process regarding the decision. (General Counsel Exhibit 14). Farrell responded to Kapitan by email on September 17, 2015, continuing to protest Respondents' actions, writing, "I respectfully disagree that the Local and International Unions had done all they could for me on this case." (General Counsel Exhibit 14).

Thus, as of September 17, 2015, Farrell had clear notice that Respondents would not seek reinstatement of his seniority upon his return to work.[23] Farrell filed his unfair labor practice charge contesting Respondents

[23] According to Farrell's testimony he was already medically cleared to work at that time. (Farrell, 223: 15-19). Thus, the lack of seniority upon his reinstatement posed an immediate concern to Farrell in September 2015. According to Kamage, Farrell had applied for positions to return to work by that time and was accusing Kamage of deliberately refusing to re-hire him. (Kamage, 21: 14-24).

failure to seek reinstatement of his seniority far outside the six-month window for filing such a charge, which began, at the latest, on September 17, 2015. Thus, the allegations that Respondents misrepresented Farrell regarding the reinstatement of his seniority should be dismissed as untimely.

2. Respondents' Actions With Respect To The Reinstatement Of Farrell's Seniority Were Based On A Good Faith Interpretation Of The Collective Bargaining Agreement And Not Any Arbitrary, Discriminatory, Or Bad Faith Reason.

"The duty of fair representation refers to the Union's 'statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.'" Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "Union actions are arbitrary only if [the union's conduct] can be fairly characterized as so far outside a 'wide range of reasonableness,' that it is wholly 'irrational' or 'arbitrary.'" Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "Discrimination refers to racial and gender discrimination as well as other distinctions made among workers, including lack of union membership." Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017). "A union acts in bad faith when it acts with an improper intent, purpose, or motive," and "[b]ad faith encompasses fraud, dishonesty, and other intentionally misleading conduct." Good Samaritan Med. Ctr. v. N.L.R.B., 858 F.3d 617, 630 (1st Cir. 2017).

The General Counsel has alleged that Respondents breached their duty of fair representation toward Farrell by holding a vote among bargaining unit members regarding the reinstatement of his seniority because of his internal union activities and by failing to file a grievance regarding the reinstatement of his seniority because of arbitrary reasons. The evidence, however, shows that Respondents acted with respect to Farrell's seniority based only upon a good faith interpretation of the collective bargaining agreement without the influence of any alleged improper motives. Respondents' actions with respect to Farrell's seniority fall within the wide range of reasonableness granted to unions in administering a collective bargaining agreement.

A. Respondents' Actions Were Directed Entirely By A Good Faith Belief That Farrell Was Not Entitled To Restoration Of His Seniority Under The Plain Terms Of The Collective Bargaining Agreement.

The evidence presented demonstrates that Respondents acted regarding Farrell's seniority based entirely upon a good faith interpretation of the language of the collective bargaining agreement. In fact, the record demonstrates that Farrell himself, on behalf of the Local, had advocated for that interpretation of the collective bargaining agreement in the past.[24] When the Local learned that Farrell was questioning his seniority prior to his return to work, the Local contacted the International for advice on the matter. At

[24] As stated above, by the time of his return in October 2016, Farrell was already on clear notice that Respondents would not pursue reinstatement of his seniority and had not provided for the return of his seniority in resolving his 2015 grievance following his removal from the contract and bargaining unit.

hearing, Miller explained that he conducted an evaluation of the status of Farrell's seniority at the request of the Local. As set out in his November 3, 2016 letter, Miller evaluated the language of the collective bargaining agreement determining that it did not support a return of Farrell's seniority. Article 2 of the contract pertains to the loss and restoration of seniority. At hearing, Miller explained that Farrell's removal from the contract fell under Article 2, Section 2.2(E) providing for loss of seniority when an "Employee is permanently transferred out of the bargaining unit."

As of January 2015, Akal had removed Farrell from his position as a CSO. At that time, the Marshal Service maintained a requirement that CSOs undergo an annual physical examination. The Marshal Service notified Akal that it was in violation of its contract with the Marshal Service on account of Farrell's failure to undergo a yearly medical examination. As a result, Akal removed Farrell from the contract, from his position as a CSO, and from the bargaining unit. Miller's interpretation of Article 2, Section 2.2(E) as encompassing Farrell's situation was entirely reasonable under the circumstances where Farrell no longer held a position as a CSO, was no longer a part of the bargaining unit, and was required to re-apply to a new position to return to work under the contract.

The General Counsel will likely argue that Respondents' actions were not based upon a reasonable interpretation of the collective bargaining agreement because Farrell simply returned from a medical leave and had not permanently lost his seniority pursuant to Article 2, Section 2.2. While the General Counsel

has construed Farrell's re-hire as a CSO in October 2016 simply as a return to work following a medical leave, the evidence overwhelmingly shows that Farrell was removed from his position entirely, and was not merely out of work on a leave, as of January 2015. At the time of his removal, Farrell held a position as the senior LCSO. Farrell did not simply return to his position when he was medically capable of performing his job. Rather, Farrell had to re-apply when a vacant position became available and was re-hired by Akal under the contract contingent upon him qualifying for that vacant position.

Throughout the grievance process and at hearing, Akal maintained that Farrell was removed from the contract but somehow remained an employee of Akal. Respondents posit that Akal employed mere semantics concerning Farrell's removal in January 2015. No evidence exists to suggest that Akal offered Farrell work of any nature during the period of time he was removed from the bargaining unit. Farrell was required to re-apply and re-pass the screening process to obtain a new, vacant position under the contract when he was medically capable of returning to work. Had Farrell failed to re-pass the certification process, no record evidence exists to suggest that Farrell would ever have returned to work as a CSO under the contract. Indeed, Farrell testified that he was medically cleared to return to work in April or May of 2015. Farrell was not immediately reinstated to his position and was not even selected for vacant positions at that time. Without the guarantees of the settlement agreement reached by the Respondents, which Respondents vigorously enforced, it is not clear that Akal would have ever selected Farrell as

a candidate for a vacancy to facilitate his re-hire. Although Kamage testified that he opened applications for positions in Scranton in 2015, Kamage was not notified by Akal that he was required to re-hire Farrell until 2016 coinciding with Respondents' efforts to return him to work under the settlement agreement.

Moreover, the General Counsel may contend that Respondents' position as to Farrell's status as having been permanently transferred out of the bargaining unit after his 2015 removal from the contract was not credible because Respondents previously characterized Farrell's removal from the bargaining unit as a termination during the grievance process. In 2015, the International assisted Farrell in filing a grievance contending that he had been terminated without just cause after his removal from the contract. At that time, Crume, the International representative handling the Farrell matter, candidly conceded that he did not know exactly what had occurred with Farrell's employment. Despite the uncertainty, Respondents took action to contest Farrell's removal. Whether employing the phrase "transferred," "removed," or "terminated,"[25] Respondents have consistently acted with the understanding that Farrell had been constructively discharged from his position as a CSO within the bargaining unit for other than disciplinary reasons. The evidence clearly demonstrates that Farrell did not hold a position as a CSO and was not a part of the bargaining unit for over a year. As such, Respondents' interpretation of the language of the collective bargaining

[25] Under Article 2, Section 2.2(B), discharge with cause similarly constitutes grounds for loss of seniority.

agreement, as resulting in Farrell's loss of his seniority upon his removal from the bargaining unit, was entirely reasonable and based upon a good faith understanding of the contract.

At hearing, Miller further explained that Farrell did not meet the conditions for reinstatement of his seniority under Article 2, Section 2.3 upon his return to work. Miller, who had extensive experience overseeing and administering collective bargaining agreements covering CSOs, opined that getting better from an injury did not constitute "overturning" a medical disqualification under Article 2, Section 2.3(A) since in overturning a medical disqualification, a CSO must show that the testing was flawed at the time of the determination.[26] The CSO-001 form completed for Farrell upon his removal from his position and Akal's selection of another employee to take that position, further demonstrates that Farrell was not simply "medically disqualified" based on the meaning of that term under the collective bargaining agreement. Without an understanding of the basis for the instruction, Kamage was directed to write "Workman's Compensation" on the form as the reason for Farrell's disqualification/removal. Kamage did not select the clearly available option to indicate that Farrell had been removed due to "Medical

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[26] The evidence shows that Farrell himself did not consider his return to work as constituting the "overturning" of a medical disqualification. During discussions preceding the settlement of his grievance, Farrell proposed to include language providing that his "seniority would be reinstated in that it would be considered over turning a medical qualification [sic] . . . ." (General Counsel Exhibit 12). It is unclear why Farrell would have requested the inclusion of language in the settlement agreement providing that his removal be "considered" a medical disqualification if Farrell believed that he had been medically disqualified.

Disqualification by FOH." (See General Counsel Exhibit 2). Given Miller's understanding of CSO medical disqualifications and consistent documentation produced by Akal, Respondents' position that Farrell had not overturned a medical examination was entirely reasonable and reached in good faith.

In concluding his evaluation of Farrell's seniority status, Miller reviewed the 2015 settlement agreement reached as a result of Farrell's removal. Miller concluded that the agreement failed to provide any rights above and beyond the language of the collective bargaining agreement entitling Farrell to reinstatement of his seniority upon his return to work.

"[I]t is well settled that a union's refusal to process a grievance does not violate the duty of fair representation where the union acted pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation regarding the merits of the complaint." Delphi/Delco East Local 651, 331 N.L.R.B. 479 (2000). "In evaluating whether the union's conduct in such cases breached the duty of fair representation, the Board's responsibility 'is not to interpret the pertinent contract provisions and determine whether the Union's interpretation of the contract] was correct. Rather, [its] responsibility is to determine whether the Union made a reasonable interpretation . . . or whether it acted in an arbitrary manner.'" Delphi/Delco East Local 651, 331 N.L.R.B. 479 (2000).

Thus, where Respondents' actions with respect to the reinstatement of Farrell's seniority were grounded upon only a reasonable interpretation of the collective bargaining agreement, Respondents did not act improperly toward

Farrell. Respondents had a legitimate interest in acting based upon that reasonable interpretation of the collective bargaining agreement, as had been consistently advocated by the Local, especially where the question of reinstating Farrell's seniority would impact the rights of other members of the bargaining unit. See General Motors Corp., 297 N.L.R.B. 31, 32 (1989) (finding that union did not violate Section 8(b)(1)(A) or 8(b)(2) by causing employer to assign employee to team receiving less overtime where action was based on legitimate union interests and in light of its interpretation of contract provisions) ("Thus, our responsibility here is not to interpret the pertinent contract provisions and determine whether the Union's interpretation of the national agreement and the local memorandum of agreement was correct. Rather, our responsibility is to determine whether the Union made a reasonable interpretation of the two provisions or whether it acted in an arbitrary manner."); Central KY Branch 361, NALC, 2018 NLRB LEXIS 179 (ALJ Decision 2018) ("Similarly, a union does not violate the duty of fair representation where it refuses to file or process a grievance pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation as to the merits of the employee's complaint.") (finding that union did not violate its duty of fair representation when it did not process grievances over employer requiring employee to work beyond her medical restrictions and removing her from her reduced work schedule where its inaction was based on a good faith evaluation of the collective bargaining agreement); American Postal Workers Union, Local 566, 2008 NLRB LEXIS 31

(ALJ Decision 2008) (dismissing complaint based on the union's denial of a request of the Charging Party to change his work schedule for his personal convenience where ALJ found that the union was attempting to protect the interests of all members of the bargaining unit by assuring that the employer paid out schedule premium to employee performing work for suspended employee when it disapproved an employee's request for a schedule change to fill the position and where there was no evidence showing that denial of change was attempt to have the employer discriminate against the employee because of union activity or a lack of union activity).

The General Counsel will likely contend that Respondents' interpretation of the collective bargaining agreement was not reasonable considering the International's involvement in the reinstatement of Reuther's seniority in 2013. Farrell himself, however, advocated against the restoration of Reuther's seniority on behalf of the Local while serving as the Secretary/Treasurer, and founded his arguments on the language of the collective bargaining agreement. Farrell, as Secretary/Treasurer, wrote to Miller repeatedly on the subject, including on March 1, 2013 (General Counsel Exhibit 16), when he indicated, in part,

> I am sending this email not only as a union official of Local 129, but also as a bargaining unit member who is adversely affected by this reinstatement of seniority. As I had indicated to you in our telephonic conversations, this action by the International was never discussed nor endorsed by the body of Local 129. . . it appears the International may have acted on behalf of one bargaining unit member, Bob Reuther, absent the approval of the Local. . . .

> Certainly there was no transparency in the actions taken, and as I had advised you previously that I, as a union official, was unaware of the actions until I was copied on an email after the decision was rendered.

Farrell again challenged the restoration of Reuther's seniority as contrary to the position of the Local and the language of the collective bargaining agreement on March 6, 2013 (General Counsel Exhibit 16), writing, in part,

> I take issue with several facts which you submitted to Ms. Dolan. . . . In your email you write:
>
> *The local is asking for his reinstatement of his seniority date to November 8, 2004 for Union and Benefit Seniority* . . . .
>
> I have discussed this with both the President, Ronald Reagan, and the Vice-President, Andrew Mallick, and both have indicated to me that they had made no such representations to you . . . . In any event I am advising you that this issue was never raised nor voted upon at any meeting, and was done well outside the body of the union. . . .
>
> Secondly you indicate:
> *Pursuant to Article 2 Section 2.3 of our current agreement, an Employee returned to work after overturning a medical disqualification shall regain their seniority back to the original date of hire.*
>
> I do not believe that Bob Reuther ever received a medical disqualification from the FOH or the USMS. I submit my belief that there was never a medical disqualification to overturn. I believe the scenario was such that Bob Reuther was injured while working, was off on workmans compensation . . . .

Following the restoration of Reuther's union seniority, in addition to Farrell's protest, at least one bargaining unit member, Snell, filed a grievance. Thus, in 2013, Farrell, on behalf of the Local, advocated that the International apply the reasonable interpretation of the language of the collective bargaining

agreement, which later formed the basis for the Respondents' actions regarding Farrell's seniority.

At hearing, Miller credibly explained that he had made a mistake with respect to handling Reuther's seniority. Miller admitted that in 2013 he was chastised by the Local for assisting Reuther and that he had taken a position not supported by the Local or the collective bargaining agreement in attempting to assist Reuther.[27] Miller explained that he made the argument that Reuther overturned a medical disqualification in an effort to assist Reuther without believing such an argument was actually supported under the circumstances. Indeed, Akal did not accept Miller's position regarding the collective bargaining agreement with respect to Reuther's seniority in 2013. Akal restored only Reuther's union seniority while refusing to reinstate his benefit seniority for the purpose of benefit calculations. Although Reuther thereafter sought reinstatement of his benefit seniority, Respondents did not pursue a grievance on that subject.

In addressing the reinstatement of Farrell's seniority, Respondents simply adhered to the reasonable interpretation of the collective bargaining agreement advocated by the Local in 2013. In correcting an erroneous approach rejected by the Local regarding the application of the collective bargaining agreement, Respondents did not fail in any obligation toward Farrell or any other impacted bargaining unit member. See UAW, Local No. 2333, 339

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[27] Reuther and Miller's text messages show that Miller was mistakenly under the impression that the Local supported his extra contractual efforts to restore Reuther's seniority.

N.L.R.B. 105 (2003) (adopting ALJ decision finding that union had rational and non-arbitrary reasons not to process employee's grievance where union and employer applied layoff protections based on unit seniority rather than hire date, even where a prior union had utilized hire date, and further finding that personal hostility toward employee did not taint decision not to process grievance); UAW, Local 167, 286 N.L.R.B. 1167 (1987) (finding no violation by the union where a bargaining committee member erroneously told Charging Party that she was not subject to the provisions of a new local seniority agreement resulting in Charging Party losing four months of seniority when she returned to the unit and where union refused to accept grievance on behalf of employee to restore seniority where there was no evidence that the committee person deliberately gave bad advice and noting at least three reasonable interpretations of the language at issue).

While the General Counsel will contend that Respondents relied upon a poll of the members, the majority of whom would have been adversely impacted by the restoration of Farrell's seniority, in directing their actions regarding Farrell, such a conclusion is not supported by the evidence. Upon learning of the concern over Farrell's seniority, the Local consulted with the International to obtain an evaluation of the issue. Only upon the International concluding that the collective bargaining agreement and settlement agreement did not support the restoration of Farrell's seniority did the Local poll members of the bargaining unit regarding the matter. The evidence shows that the purpose of the poll was not to evaluate whether Respondents would process a grievance on

behalf of Farrell but rather was to determine whether they would undertake an effort to attempt to modify the language of the collective bargaining agreement. At hearing, Wigley explained that conducting a vote to determine if the membership wished to restore Farrell's seniority was the first step in a two-step process. The second step was to be efforts to amend the collective bargaining agreement if the vote had been favorable. (Wigley, 214: 20-23; 215: 21-25; 216: 1) Respondents were under no obligation to attempt to open the collective bargaining agreement midterm to try to provide a resolution to Farrell's seniority concerns. Respondents violated no duty owed toward Farrell in obtaining the position of the unit members prior to determining whether they would attempt to take additional steps when they were under no obligation to pursue those further steps.[28] Respondents' decision regarding Farrell's rights to his seniority were directed not by the poll of the members, but by a reasonable, good faith interpretation of the collective bargaining agreement consistent with Farrell's own understanding of the language of the agreement.

B. The Evidence Fails To Show That Respondents' Actions With Respect To The Reinstatement Of Farrell's Seniority Were Motivated By Discriminatory Or Arbitrary Reasons.

The General Counsel will likely contend that Respondents' treatment of Farrell was guided not by a reasonable, good faith interpretation of the

[28] Moreover, in taking a poll of the membership, who would be impacted by the outcome of the reinstatement of his seniority, Farrell was treated no differently than Reuther. Miller asked Reuther to poll members impacted by his seniority in 2013.

collective bargaining agreement but was motivated by impermissible and/or arbitrary considerations including hostility to Farrell because of his union activities. The General Counsel will likely argue that interactions between Farrell and members of the Local's Executive Board prior to and following Farrell's request for the reinstatement of his seniority show hostility. Nonetheless, the Local deferred entirely to the International's objective evaluation of the issue based on the collective bargaining agreement and settlement agreement.[29] No evidence whatsoever exists to show that either the International, as a whole, or Miller, in particular, were adverse to Farrell for any reason including his engagement in union activities.

Simply, the record contains no evidence showing animus or hostility on the part of the International toward Farrell. In 2015, when he was removed from the contract, Farrell requested the assistance of the International in processing a grievance challenging the Company's actions. The International assisted Farrell in filing and processing a grievance resulting in a settlement agreement allowing for Farrell's return to work to a vacant position upon his successfully satisfying applicable qualification requirements. When Farrell faced difficulties in returning to a vacant position under that agreement, the International advocated for Farrell resulting in his return to work. In an effort to enforce the settlement agreement, Miller filed an unfair labor practice with the NLRB.

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[29] Even Farrell himself reached out to the International for guidance on the issue.

Upon his return to work in October 2016, Farrell communicated directly with Miller. Farrell did not indicate that Miller expressed any hostility or bias in those interactions. Even prior to his removal in 2015, the record shows the absence of animus between the International and Farrell. When Farrell served as the Secretary/Treasurer of the Local, Farrell consulted with the International. Indeed, Miller supported Farrell in not processing a grievance concerning the written reprimands given to multiple unit members for allegedly leaving work early.[30]

The General Counsel might contend that the International was of no assistance to Farrell, because the terms of the settlement agreement were similar to those included in Akal's initial letter removing Farrell from the contract, thereby showing hostility toward him. A working draft of the agreement shows that Respondents attempted to seek further protections for Farrell such as providing him with an opportunity to reapply to his former position immediately upon his physician declaring him fit for duty. (General Counsel Exhibit 28). While Respondents were unable to obtain those additional protections through the settlement, Miller testified that Farrell's grievance was not arbitrable and that the Respondents processed it to provide more leverage in resolving the matter as favorably as it could toward Farrell. His belief in that regard is confirmed by Akal's response to the grievance.

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[30] The General Counsel will likely cite Farrell's involvement regarding that grievance as the source of hostility between the Local and Farrell. The record, however, shows that Miller indicated that the International would not support that grievance in favor of Farrell's position. It is nonsensical to suggest that Miller would have had any hostility to Farrell because of that grievance.

(General Counsel Exhibit 10). Moreover, unlike the initial letter sent to Farrell inviting him to re-apply in the future, the settlement agreement (General Counsel Exhibit 13) required Akal to re-hire Farrell upon his satisfaction of the terms of the agreement. Indeed, Kamage confirmed that in 2016 Akal advised him that he had to "re-hire" Farrell under the terms of that settlement agreement. (Kamage, 22: 2-3).

Further, the International's refusal to include the restoration of seniority as a part of the settlement of the grievance filed by it over Farrell's removal is entirely consistent with the International's interpretation of the seniority sections of the collective bargaining agreement upon which the International's decision not to file a grievance following Farrell's return to work in the Fall of 2016 was based. The International's decision not to seek the restoration of Farrell's seniority as a part of the settlement agreement occurred far prior to any of Farrell's protected activities upon which the General Counsel relies in arguing that Respondents' decision not to seek reinstatement of Farrell's seniority upon his return in October 2016 was arbitrary or unreasonable.

The General Counsel might also contend that the International was hostile to Farrell for impermissible reasons because the International did not agree to restore Farrell's seniority when Akal indicated that it was willing to do so. Akal, in responding to Farrell's attorney-initiated inquiry about his seniority, was not responding with respect to the best interests of the Respondents. Indeed, Akal's position on the matter appears suspect given its refusal to restore Reuther's benefit seniority in 2013 in response to Miller's

request.[31] No evidence exists to explain why Akal took a different position regarding Farrell in 2016 as compared to Reuther in 2013. However, this would not be the first time that an employer tried to divide a union from its membership for self-serving reasons.

Unlike Akal, Respondents were required to consider the interests of all the members of the bargaining unit as a whole in addressing Farrell's request. The return of Farrell's seniority would impact multiple bargaining unit members in a manner which Respondents determined was not supported by the contract. The 12 CSOs who would have been impacted by a return of Farrell's seniority indicated that they intended to file a class action grievance if Farrell's request was granted.[32] (Reuther, 163: 14-25). Where no evidence exists to show that the International held any impermissible animus toward Farrell for discriminatory or arbitrary reasons and the International was solely responsible for assessing Farrell's seniority claim, the General Counsel has failed to show that Respondents acted for arbitrary or discriminatory reasons.

Nonetheless, General Counsel will likely argue that the conduct of Reuther and Wehrer demonstrates that personal hostility toward Farrell fueled Respondents' actions regarding Farrell's seniority. Foremost, the Local did not evaluate Farrell's request for reinstatement of his seniority, it deferred to the objective judgment of the International. Further, the evidence fails to show any

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31 Reuther's benefit seniority was never restored and Respondents did not pursue that matter.

32 At least one grievance was also filed in 2013 following the extra-contractual restoration of Reuther's seniority.

significant hostility between the Local and Farrell at the time of his return to work in October 2016. Farrell testified, generally, that Reuther and Wigley were unhappy with him because he had advocated against processing a grievance on their behalf at some unidentified time prior to 2014. At most, Sivahop testified that Wigley said Farrell was no fucking good in reaction to the Local's lack of support for Wigley's grievance.

The General Counsel, however, produced no evidence showing that either Wigley or Reuther ever raised the subject of the rejected grievance following 2014. No evidence exists to show that Wigley and Reuther ever linked the Local's treatment of Farrell's seniority to his previous conduct regarding their grievance or made any comments even vaguely connected to that matter. Indeed, Sivahop testified that no reprimands were ever actually placed into the files of the CSOs involved in the alleged "leaving early" discipline and, as such, no basis would even exist for continued discontent over the matter. No evidence links that single, remote event resulting in no disciplinary consequences for Wigley and Reuther to Respondents' treatment of Farrell's seniority in 2016. Indeed, Miller himself had determined that the International would not support that distant grievance regarding Wigley and Reuther because it was untimely.

Further, while Wigley and Reuther took over the leadership of the Local in 2014 from predecessors including Farrell, no evidence exists to suggest any kind of internal struggle or rivalry within the Local. Wigley and Reuther took office following an uncontested election after the existing leadership resigned

from their positions. Other than Farrell's contention that personal animus existed between himself and the Local as of October 2016, no evidence exists to show any hostility or impermissible considerations guiding the Local's actions at that time.

Indeed, Farrell had a clear motive to misconstrue his relationship with the Local as of October 2016 and his testimony at hearing only served to demonstrate his propensity to exaggerate. For instance, Farrell testified at hearing regarding a voicemail he received in 2017. In recounting the voicemail, Farrell described hearing multiple statements made as a part of the recording. Other than two statements made within the first seconds of the tape, the voicemail is garbled and inaudible. (Joint Exhibit 6(a)).[33] Further, at hearing, despite the clear language of Akal's January 14, 2015 letter requiring Farrell to apply to a vacant position and repeat the credentialing process, rather than return to his senior LCSO position, Farrell testified that Akal's grievance response indicated that as soon as he was able physically to return to work, he would be able to return. (Farrell, 84: 15-17). Despite that contention at hearing, shortly after receiving the response, Farrell emailed the International to request local legal representation. In his communications with the International in 2015, Farrell contended that Reuther "was able to return to the position upon medical clearance with total seniority and able to jump over all applicants." (General Counsel Exhibit 12). No evidence exists to suggest

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[33] Although Respondents' witnesses did not testify regarding the voicemail, the best evidence of the voicemail is the recording itself which is in evidence not other individuals' recollection of that recording.

that Reuther received preferential hiring in 2012. Akal denied the restoration of Reuther's benefit seniority and did not reinstate his union seniority until 2013.

Further, at hearing Farrell testified that he was medically cleared to work in April or May of 2015. In his communications with the International in September 2015, Farrell, in referring to the re-application process, commented that he hoped he would get to that point God willing, strongly implying, if not explicitly stating, that he had not yet reached that stage. (General Counsel Exhibit 14). Farrell similarly testified that he was concerned about the reinstatement of Reuther's seniority in 2013 because of potential layoffs: "[a]nd being that I was shared time, it would have meant that I would have no offers." (Farrell, 224: 6-10). At the time Farrell protested the return of Reuther's seniority, he was a full-time LCSO, having taken that position on January 9, 2012 as demonstrated by the Local seniority list. (Joint Exhibit 9). Farrell's comments, often in contradiction with the record evidence, at the very least show an inclination to exaggerate regarding matters potentially favoring his own agenda. As such, Farrell's characterization of his relationship with the Local in October 2016 should not be credited in the absence of any contemporaneous evidence of hostility or impermissible motives.

While the General Counsel presented myriad evidence regarding personal conflicts at the Scranton courthouse following Farrell's return in October 2016 after Respondents evaluated Farrell's request for reinstatement of his seniority, those subsequent events do not show the existence of personal hostility at the

time of Farrell's return to work or that impermissible considerations clouded Respondents' judgment. In evaluating the General Counsel's allegations, the Administrative Law Judge should not consider matters outside the scope of the Complaint. At hearing, Respondents objected to the admission of evidence significantly post-dating the events alleged in the Complaint as irrelevant and beyond the scope of the General Counsel's allegations in this matter. (General Counsel Exhibit 1(p); Transcript, 35: 20-25; 36: 1; 37: 11-15; 107: 13-14). While such evidence was admitted over Respondents' objection, that evidence far post-dating Farrell's return to work and should not be considered in assessing whether the Respondents acted based on impermissible motives in October 2016.

Similarly, General Counsel has moved for the admission of two investigative reports and will likely contend that statements in those reports demonstrate that the Local acted based upon impermissible motives. (Joint Exhibit 12 at ¶¶ 3-4; Joint Exhibits 3 & 4). Respondents object to the admission of these reports as unreliable and outside the scope of the Complaint. The reports contain substantial hearsay and summarize the interviews of multiple employees, none of whom were sworn. Those employees were not subject to cross-examination by Respondents and no transcripts of their interviews exist through which Respondents could verify the accuracy of the investigative findings. Moreover, they contain highly speculative opinions from a management agent about two union leaders that should be treated with a fair degree of skepticism for that reason alone. See Performance Friction

Corp., 335 N.L.R.B. 1117 (2001) (declining, as part of Administrative Law Judge decision, to accept employee action report under business record exception when union objected to receiving the report for the truth of the description where business record exception did not apply because the circumstances under which the report was prepared indicated a lack of trustworthiness). As such, the Administrative Law Judge should not admit the reports into the record.

Even if the General Counsel could demonstrate personal hostility between the Local and Farrell as of October 2016, no evidence exists showing a connection between that personal hostility and Respondents' treatment of Farrell's seniority. As stated above, the Local deferred the matter to the International for its objective consideration. No evidence exists to show that the International was motivated by any sort of improper considerations in assessing Farrell's seniority. See Van Der Veer v. United Parcel Service, 25 F.3d 403 (6th Cir. 1994) ("Not all members of the same union are necessarily personal friends. They may even be personal rivals - bearing ordinary human jealousies and conflicting goals. Such personal differences may be evidence that a union officer was hostile to a particular union member. This personal hostility may even be the first step in an employer's discipline against a bargaining unit employee. Personal hostility is not enough, however, to establish a prima facie case of unfair representation in a union member's discharge if the union's representation during the disciplinary steps is adequate and there is no evidence that the personal hostility tainted the

arbitrators' decision."); Bloom v. Make-up Artists & Hairstylists Local 706, 1999 U.S. Dist. LEXIS 19216, *34 (C.D. Cal. 1999) ("That is, for the hostility to be actionable, there must be a nexus between it and the unfavorable outcome of the arbitration.").

Where the evidence shows that Respondents acted with respect to Farrell's seniority based only upon a good faith, reasonable interpretation of the collective bargaining agreement, the General Counsel has failed to meet her burden of proof to show that Respondents' conduct toward Farrell was arbitrary or discriminatory. As such, the allegations regarding Farrell's seniority should be dismissed.

3. The General Counsel Has Failed To Prove That The Local Made Any Complaint About Wehrer And, As Such, The Allegations That The Local Violated Sections 8(b)(1)(A) And 8(b)(2) Of The Act With Respect To Wehrer Should Be Dismissed.

Indisputably, personal tension existed among the employees of the Scranton courthouse by the Summer of 2017. The record shows that myriad complaints were filed by the CSOs at the location, including even five complaints directed at Kamage. Like Farrell and Wehrer who actively participated in the making of individual complaints, Reuther filed an individual complaint alleging harassment by Wehrer in July 2017. The evidence, however, fails to show that Wigley ever made a complaint of any kind against Wehrer or joined in Reuther's individual complaint as alleged by the General Counsel. Although Reuther made an individual complaint, the evidence fails to

show that the Local acted unlawfully toward Wehrer in violation of either Sections 8(b)(2) or, independently, 8(b)(1)(A) of the Act.

A. The General Counsel Has Failed To Show That Reuther Acted As An Agent Of The Local In Complaining About Wehrer.

The General Counsel has failed to show that Reuther was acting as an agent of the Local in making his July 2017 complaint about Wehrer or that Reuther's actions can be attributed to the Local. In evaluating whether an individual is acting as an agent for a union, the Board applies common law agency principles. See Shen Automotive Dealership Group, 321 N.L.R.B. 586 (1996); Great American Products, 312 N.L.R.B. 962 (1993). "According to the Restatement 2d, Agency, § 7, actual authority refers to the power of an agent to act on his principal's behalf when that power is created by the principal's manifestation to him." CWA, Local 9431, 304 N.L.R.B. 446, n.4 (1991). "That manifestation may be either express or implied." CWA, Local 9431, 304 N.L.R.B. 446, n.4 (1991). "Apparent authority, on the other hand, results from a manifestation by a principal to a third party that another is his agent." CWA, Local 9431, 304 N.L.R.B. 446, n.4 (1991). "Under this concept, an individual will be held responsible for actions of his agent when he knows or 'should know' that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him." CWA, Local 9431, 304 N.L.R.B. 446, n.4 (1991). "As with actual authority, apparent authority can be created either expressly or, as in this case, by implication." CWA, Local 9431, 304 N.L.R.B. 446, n.4 (1991).

"The burden of proof is on the party asserting an agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority." ILWU, Local 6, 79 N.L.R.B. 1487, 1508 (1948). "The agency relationship must be established with regard to the specific conduct that is alleged to be unlawful." Cornell Forge Company, 339 N.L.R.B. 733, 733 (2003). "An individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party." Cornell Forge Company, 339 N.L.R.B. 733, 733 (2003).

The evidence shows that Reuther had neither actual nor apparent authority on behalf of the Local in July 2017 in making the complaint concerning Reuther. Although Reuther was the Vice President of the Local at the time of his July 2017 complaint, Reuther never indicated that he was acting on behalf of the Local and the complaint itself does not indicate that it was being filed on behalf of the Local.[34] Reuther did not sign the complaint with his Local title or use union letterhead to file the complaint. No evidence exists to suggest that the complaint was otherwise presented in a manner that would show that Reuther was acting with actual or apparent authority on

[34] To the extent that Wehrer attributed the hostility or complaints as stemming from the Local rather than Reuther as an individual at hearing, Wehrer should not be found credible. Wehrer filed multiple charges of harassment against Reuther including claims regarding (1) a falsification of a log; (2) body odor; (3) gun handling; (4) changing of locker name plates; and (5) radio tampering. Other than the incidents involving the log and the gun complaint, for which Wehrer was admonished for mishandling his weapon, Wehrer admitted that he did not know if Reuther was even involved in any of the other incidents he contended constituted a pattern of harassment by Reuther. Wehrer's testimony regarding his interactions with Reuther is simply not reliable given Wehrer's proven tendency to attribute events to Reuther without basis.

behalf of the Local or within the scope of his duties as Vice President of the Local. While the evidence shows that CSOs individually filed frequent complaints, no evidence exists to show Reuther filed his complaint in a manner different from other complaints made to Kamage.

B. The General Counsel Has Failed To Show That Wigley Made Any Complaint About Wehrer Or Joined In Any Complaint Made Concerning Wehrer.

In an attempt to show that Reuther was acting as an agent of the Local in making his complaint, the General Counsel will likely allege that Wigley either complained against Wehrer or joined in Reuther's July 2017 complaint. Reuther's complaint pertains to matters entirely related to Reuther and does not mention, or relate in any way, to Wigley. (General Counsel Exhibit 6). At hearing, Wigley indicated that he did not accompany Reuther to make the July 2017 complaint, did not join Reuther in his complaint to Kamage in July 2017, and never made any other complaints about Wehrer to Kamage. (Wigley, 220: 3-11; 220: 12-14; 222: 6-15).

At hearing, Kamage contended that Wigley was present with Reuther at the time of the complaint and that Reuther indicated that he brought Wigley as a union representative. Given the volume of complaints filed and Kamage's uncertainty about the dates, it is entirely possible that Kamage was mistaken about Wigley's presence on the occasion in question. At hearing, Kamage was uncertain of the date of the complaint first identifying it as occurring in July 2016 and then as in July 2017. (Kamage, 44: 16-25; 45: 1-5). Kamage even commented, "That time frame. I'm not positive on the dates; there were so

many coming in." (Kamage, 45: 4-5). Wehrer had by that time, filed multiple complaints against Reuther which could have potentially resulted in disciplinary action against Reuther.[35] As such, Kamage's testimony about Wigley's presence should not be credited over Wigley's credible testimony that he did not accompany Reuther and that he never made a complaint of any kind against Wehrer.

Where credible evidence shows that Wigley never made any complaint against Wehrer or joined in Reuther's complaint, the General Counsel has failed to show that the Local ever caused a complaint to be made against Wehrer. Reuther simply filed an individual complaint against a co-worker in a manner no different from the way other individual complaints were presented to Kamage.[36] As such, under the circumstances, no evidence exists to suggest that Reuther was acting with actual or apparent authority on behalf of the Local in making the complaint. See Twin City Carpenters, 152 N.L.R.B. 887 (1965) (adopting ALJ's decision dismissing complaint contending that union caused discharge of nonunion employee where evidence showed that union steward caused or was attempting to cause nonmember's discharge and vocally

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35 Even if Reuther brought Wigley to accompany him to make the complaint as a union representative, such an action does not show that Reuther filed the complaint with actual or apparent authority of the Local. The subject matter of the complaint concerned prior accusations that had been made against Reuther, presumably which could have resulted in disciplinary action against him, and it would be entirely reasonable to desire a witness to the conversation. Notably, even based on Kamage's version of events, Wigley was identified as a union representative not as a participant in the complaint.

36 Indeed, Wehrer, who holds no role in the Local, testified that he presented Kamage with a similar sort of complaint against Reuther. (Wehrer, 127: 14-21).

expressed his unwillingness to work with a nonunion employee but where evidence was insufficient to show that employee was acting on behalf of the union where steward did not rely on his position in voicing his displeasure, he did not urge other employees to leave the job, and had obtained union position only because he was the most senior in classification) citing Tampa Sand and Material Co., 132 N.L.R.B. 1564 (1961) ("To hold that a steward may not walk off the job because of his own unwillingness to handle nonunion products [or work with a nonunion man] without fixing a responsibility for an unfair labor practice upon his union is to foreclose the steward, simply by reason of his office, from all individual freedom of action."); UAW, Local Union No. 509, 363 N.L.R.B. No. 147 (2016) (adopting ALJ finding that union did not violate the Act where one of its representatives made a report about another member where evidence showed that employees were disciplined in the past for harassment allegations where evidence showed that representative was acting in an individual capacity). Where the evidence shows (1) that Wigley did not join in Reuther's complaint and never filed any complaints of his own against Wehrer and (2) that Reuther filed his complaint against Wehrer as an individual and not on behalf of the Local, the General Counsel's allegations that the Local violated Sections 8(b)(2) and 8(b)(1)(A) regarding Wehrer should be dismissed.

4. The General Counsel Has Failed To Show That Reuther Acted As An Agent Of The Local In Inquiring About Farrell's iWatch And, Therefore, The Allegations That The Local Violated Sections 8(b)(1)(A) And 8(b)(2) Of The Act With Respect To Farrell Should Be Dismissed.

Just as the General Counsel has failed to attribute Reuther's conduct to the Local regarding his complaint about Wehrer, the General Counsel has not shown that Reuther was acting with actual or apparent authority on behalf of the Local in inquiring about Farrell's iWatch. Instead, the evidence shows that Reuther was acting solely as an individual in raising the matter of Farrell's iWatch to Kamage. As such, the General Counsel has failed to show that the Local engaged in any conduct that violated either Section 8(b)(2) or, independently, Section 8(b)(1)(A) with respect to Farrell.

At hearing, Reuther confirmed that he did not approach Kamage as a union official in September 2017. Instead, Reuther spoke with Kamage alone, as an individual, to inquire whether the iWatch, which was at that time being worn and used by Farrell, constituted a prohibited personal electronic device within the meaning of the Employer's policies. While Reuther indicated that other CSOs shared his interest in the subject, he did not indicate that he was acting in his capacity as Local Vice President or as a union representative on behalf of those CSOs. Reuther did not state that his conversation with Kamage constituted a union matter and no other members of the Local's Executive Board were present with him.

No evidence whatsoever exists to suggest that the Local supported Reuther or took part in his actions in approaching Kamage. The General Counsel will likely contend that Reuther was acting with apparent authority on behalf of the Local simply by approaching Kamage in his office about the matter. However, the evidence fails to show that speaking with Kamage in his office imbued Reuther with any sort of actual or apparent authority on behalf of the Local. The record does not show that Reuther, in speaking to Kamage in his office, acted differently from other CSOs with concerns and/or complaints at the Scranton courthouse or in a manner that would suggest he was acting on behalf of the Local. The evidence shows that employees regularly approached Kamage regarding concerns as individuals regardless of any role in the Local. Indeed, immediately after Reuther spoke with Kamage, Farrell, although holding no role in the Local, approached Kamage to discuss his iWatch in Kamage's office.[37] The record shows that Farrell also immediately approached Kamage individually upon his return to work to inquire about his seniority. Where the General Counsel has failed to show that Reuther was acting as an agent of the Local in addressing the iWatch, rather than as an individual, and no evidence exists to show that the Local filed made any other

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[37] General Counsel may contend that events subsequent to Reuther's interaction with Kamage about the iWatch, including the investigative report related to voicemail left on Farrell's cell phone, somehow attribute Reuther's conduct to the Local. For the reasons stated above, the Administrative Law Judge should not admit the investigative reports (Joint Exhibits 3 & 4) into evidence. The reports are replete with hearsay, counsel has had no opportunity to cross-examine the individuals interviewed on the subject matter, and the circumstances under which the reports were prepared do not give any special assurance of reliability.

sort of complaint against Farrell, the allegations that the Local violated both Sections 8(b)(2) and 8(b)(1)(A) regarding Farrell should be dismissed.

IV. CONCLUSION

For the reasons set forth above, the Respondents respectfully request that the Administrative Law Judge dismiss all allegations of the Consolidated Complaint.

Respectfully submitted,

On behalf of the United Government Security Officers of America International and its Local 129,

By its attorneys,

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Date: May 25, 2018

CERTIFICATE OF SERVICE

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing Post-Hearing Brief On Behalf Of The United Government Security Officers of America And Its Local 129 upon Patricia Tisdale, Esq., [Patrice.Tisdale@nlrb.gov] Field Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, Joseph Farrell [daytonajoefarrell@gmail.com], and David Wehrer [kdswehrer@verizon.net] by email.

Dated: May 25, 2018

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